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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,935	02/18/2004	Gary Buhrman	BUHG 8858US	1920

1688 7590 09/02/2004

POLSTER, LIEDER, WOODRUFF & LUCCHESI
12412 POWERS COURT DRIVE SUITE 200
ST. LOUIS, MO 63131-3615

EXAMINER

VALENTI, ANDREA M

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 09/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/780,935

Applicant(s)

BUHRMAN, GARY

Examiner

Andrea M. Valenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,870,583 to Gidge.

Regarding Claim 1, Gidge teaches a base material made from a generally flexible and porous material (Col. 2 line 45 and Col. 3 line 35-39), the base A rollable mulch carpet comprising: material having a lower ground engaging surface and an upper surface; and a mulch-like material (Col. 2 line 61) having the general appearance of natural wood mulch, the mulch-like material being adhered (Col. 3 line 13) to the upper surface of the base material and substantially covering the upper surface of the base material.

Regarding Claim 13, Gidge teaches the mulch-like material is adhered to the base material in a single layer that substantially covers the upper surface of the base material (Fig. 1 and 14 #146).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-12 and 14-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,870,583 to Gidge in view of U.S. Patent No. 5,910,514 to Greenberg et al.

Regarding Claims 2 and 15, Gidge teaches natural appearing mulch layer of wood chips, but is silent on the mulch-like material being made from one of either shredded tires or plastic. However, Greenberg et al teaches natural appearing mulch wood chips fabricated from ground up tires (Greenberg abstract). It would have been obvious to one of ordinary skill in the art to modify the teachings of Gidge with the teachings of Greenberg at the time of the invention since the modification is merely an engineering design choice selecting a particular known material for the advantage of allowing the mulch to yield when impacted as taught by Greenberg (Greenberg Col. 2 line 29-35).

Regarding Claims 3 and 4, Gidge as modified teaches the mulch-like material is bonded to the base material (Gidge Col. 1 line 61-66).

Regarding Claim 5, Gidge as modified teaches the mulch-like material and the base material are made substantially from the same rubber or plastic material (Gidge Col. 3 line 35-40 and Greenberg Col. 1 line 61-63).

Regarding Claims 6 and 18, Gidge as modified teaches the mulch-like material is adhered and/or bonded to the upper surface of the base material by chemical or heat (Gidge Col. 3 line 1-45).

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Regarding Claim 7, Gidge as modified teaches the base material is made from one of either a generally porous plastic or a generally porous nylon material (Gidge Col. 3 line 37).

Regarding Claim 8, Gidge as modified teaches the rollable mulch carpet is flexible enough to be stored, transported, or installed in a rolled up configuration (Gidge Fig. 14).

Regarding Claim 9, Gidge as modified teaches the mulch-like material is generally weather resistant (Gidge Col. 1 line 62).

Regarding Claims 10, 16, and 17, Gidge as modified teaches the rollable mulch carpet is manufactured in generally rectangular sections (Gidge Fig. 14), but is silent on the width of about 3ft. and the length about 10ft. However, it would have been obvious to one of ordinary skill in the art to modify the teachings of Gidge at the time of the invention since the modification is merely a change in size for an efficient/cost effective production of the product and does not present a patentably distinct limitation [*In re Rose*, 220 F.2d 459, 463, 105 USPQ 237, 240 (CCPA 1955)].

Regarding Claim 11, Gidge as modified teaches the base material includes a plurality of rectangular openings (Gidge abstract line 10), but is silent on the opening being not greater than about 0.01 square inches. However, it would have been obvious to one of ordinary skill in the art to modify the teachings of Gidge at the time of the invention since the modification is merely a change in size to efficiently allow for drainage but small enough to prevent weed growth derived through routine tests and experimentation.

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Regarding Claim 12, Gidge teaches the base material and the mulch-like material are resistant to damage by insects (Gidge Col.2 line 12).

Regarding Claims 14 and 19, Gidge as modified is silent on the single layer of mulch-like material has a thickness of about 0.5 inch or less or the rollable mulch carpet has a thickness of about 0.5 inch or less. However, it would have been obvious to one of ordinary skill in the art to modify the teachings of Gidge at the time of the invention since the modification is merely a change in size for an efficient/cost effective production of the product and does not present a patentably distinct limitation [*In re Rose*, 220 F.2d 459, 463, 105 USPQ 237, 240 (CCPA 1955)].

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Japanese Patent JP 06153688 ; U.S. Patent No. 3,067,542; U.S. Patent No. 4,910,052; U.S. Patent No. 5,502,921; U.S. Patent No. 4,794,726; U.S. Patent No. 4,062,145; U.S. Patent No. 5,330,804; U.S. Patent No. 5,105,577; U.S. Patent No. 5,323,557.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax

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phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Andrea M. Valenti
Patent Examiner
Art Unit 3643

18 August 2004



Peter M. Poon
Supervisory Patent Examiner
Technology Center 3600